

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CLIFTON WAYNE MAXWELL,
Petitioner,
v.
GEORGE A. NEOTTI, Warden.
Respondent.

Civil No. 09cv2660 L (BLM)

**ORDER ADOPTING REPORT AND
RECOMMENDATION AND
GRANTING MOTION TO DISMISS
FIRST AMENDED PETITION FOR
WRIT OF HABEAS CORPUS [doc.
#15]**

Petitioner Clifton Wayne Maxwell, a state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 and later filed an amended petition. The case was referred to United States Magistrate Judge Barbara L. Major for a report and recommendation (“Report”) pursuant to 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(d). In the Report, the magistrate judge recommended the granting of respondent’s motion to dismiss the first amended petition because the amended petition is moot. .


In reviewing a magistrate judge’s report and recommendation, the district court “shall make a *de novo* determination of those portions of the report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Under this statute, “the district judge must review the magistrate judge’s findings and recommendations *de novo if objection is made, but not otherwise.*” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*)

(emphasis in original); *see Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003) (applying *Reyna-Tapia* to habeas review).

Objections to the Report were to be filed by August 5, 2010. To date, neither party has filed an objection to the Report. Accordingly, **IT IS ORDERED** adopting the Report and Recommendation in its entirety and granting respondent's motion to dismiss the first amended petition for writ of habeas corpus.

IT IS SO ORDERED.

DATED: August 24, 2010


M. James Lorenz
United States District Court Judge

COPY TO:

BARBARA L. MAJOR
UNITED STATES MAGISTRATE JUDGE

ALL COUNSEL/PARTIES